

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EULA CARTER,

Plaintiff,

v.

MICHAEL J. ASTRUE,*

Defendant

No. 07-1088 MMC

**ORDER DECLINING TO DISCHARGE
ORDER TO SHOW CAUSE; EXTENDING
DEADLINE FOR PLAINTIFF TO
EFFECTUATE SERVICE OF SUMMONS
AND COMPLAINT**

Before the Court is plaintiff Eula Carter's response, filed August 30, 2007, to the Court's order of August 27, 2007, which order directed plaintiff to show cause why the instant action should not be dismissed for failure to timely serve the summons and complaint on defendant.¹

In her response, plaintiff states she has been unable to serve defendant because "the summons has yet to be issued," (see Pl.'s Response at 2:2), and requests both

¹Plaintiff did not provide the Court with a chambers copy of her response. For future reference, plaintiff is reminded of the following provision in the Court's Standing Orders: "In all cases that have been assigned to the Electronic Case Filing Program, the parties are required to provide for use in chambers one paper copy of each document that is filed electronically. The paper copy of each such document shall be delivered no later than noon on the day after the document is filed electronically. The paper copy shall be marked 'Chambers Copy' and shall be delivered to the Clerk's Office in an envelope clearly marked with the judge's name, case number, and 'E-Filing Chambers Copy.'"

*Michael J. Astrue is substituted as defendant. See Fed. R. Civ. P. 25(d)(1).

1 issuance of the summons and an extension of time to serve defendant.

2 Rule 4(b), in relevant part, provides as follows:

3 Upon or after filing the complaint, the plaintiff may present a summons to the
4 clerk for signature and seal. If the summons is in the proper form, the clerk
shall sign, seal and issue it to the plaintiff for service on the defendant.

5 See Fed. R. Civ. P. 4(b). In other words, plaintiff must first submit a completed summons
6 to the Clerk before the Clerk can, assuming the summons is in the proper form, issue it.
7 Because plaintiff does not assert that the Clerk has failed to act on a properly-completed
8 summons plaintiff has previously submitted, plaintiff has failed to show good cause exists
9 for her failure to serve defendant, and the Court declines to discharge its order to show
10 cause.

11 Nevertheless, because it appears plaintiff may have been unaware of her
12 responsibility to submit a summons to the Clerk, and there being no apparent prejudice to
13 the defendant by reason of the delay, given that the instant action is limited to a review of
14 an administrative record, the Court will exercise its discretion to afford plaintiff an extension
15 of time to effectuate service upon defendant. See Fed. R. Civ. P. 4(m).

16 Accordingly, the deadline for plaintiff to complete service on defendant and to file
17 proof of such service is hereby EXTENDED to October 12, 2007. If, by that date, plaintiff
18 has not filed proof of service demonstrating that she has served defendant, the Court will
19 dismiss the instant action for failure to serve, pursuant to Rule 4(m).

20 **IT IS SO ORDERED.**

21
22 Dated: September 10, 2007

23 
MAXINE M. CHESNEY
United States District Judge